me Court 3.
I L E D
No. 04 118 JUL 21 2004
OFFICE OF THE CLERK

In The Supreme Court of the United States

GUY ALTOBELLO, WILLIAM HANHARDT, and JOSEPH BASINSKI,

Petitioners,

v.

UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari To The Seventh Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

MARC W. MARTIN
Counsel of Record
53 W. Jackson Blvd., Suite 1420
Chicago, IL 60604
(312) 408-1111
Attorney for Petitioner Guy Altobello

JEFFREY COLE
COLE & STAES
321 Plymouth Ct., Suite 1150
Chicago, IL 60604
(312) 697-0200
Attorney for Petitioner William Hanhardt

ANDREW STAES
COLE & STAES
321 Plymouth Ct., Suite 1150
Chicago, IL 60604
(312) 697-0200
Attorney for Petitioner Joseph Basinski

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Does the rule recognized in *Blakely v. Washington*, ___ U.S. ___, 124 S.Ct. 2531 (2004), apply to the United States Sentencing Guidelines? If so, should sentencing guideline offense level increases and upward departures based on facts not admitted by the Petitioners but found by a judge using a preponderance of the evidence standard be vacated?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PRAYER	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION	5
I. THE FIFTH AND SIXTH AMENDMENTS TO THE UNITED STATES CONSTITUTION REQUIRE THAT ANY OFFENSE LEVEL INCREASE OR UPWARD DEPARTURE UNDER THE UNITED STATES SENTENCING GUIDELINES TO BE BASED ON FACTS PROVEN BY THE GOVERNMENT BEYOND A REASONABLE DOUBT TO A JURY OR ADMITTED BY THE DEFENDANT	5
CONCLUSION	8

TABLE OF AUTHORITIES

Page

CASES

Blakely v. Washington, ___ U.S. ___, 124 S.Ct. 2531 (2004) 5, 6, 7

Griffith v. Kentucky, 479 U.S. 314 (1987) 6

Schriro v. Summerlin, ___ U.S.___, 124 S.Ct. 2519 (2004) 6

United States v. Booker, 2004 WL 1535858 (7th Cir., July 9, 2004) 7

United States v. Croxford, ___ F.Supp.2d ___, 2004 WL 2041551564 (D.Utah, July 12, 2004) 7

United States v. Hanhardt, 361 F.3d 382 (7th Cir. 2004) .. 3, 4, 5

United States v. Montgomery, 2004 WL 1562904 (6th Cir., July 14, 2004) 7

United States v. Penaranda, ___ F.3d ___, 2004 WL 1551369 (July 12, 2004) 7

United States v. Pineiro, ___ F.3d ___, 2004 WL 1543170 (5th Cir., July 12, 2004) 7

United States v. Shamblin, ___ F.Supp.2d ___, 2004 WL 1468561 (S.D.W.Va., June 30, 2004) 7

Yates v. Aiken, 484 U.S. 211 (1988) 6

STATUTES

28 U.S.C. § 1254(1) 1

UNITED STATES CONSTITUTION

U.S. Const. amend. V 1, 5, 6

U.S. Const. amend. VI 2, 5, 6

TABLE OF AUTHORITIES – Continued

Page

UNITED STATES SENTENCING GUIDELINES

U.S.S.G. § 2B1.1(b)(2) 3, 4

U.S.S.G. § 3B1.1(a) 4, 5

U.S.S.G. § 3B1.1(b) 5

U.S.S.G. § 3C1.1 ..... 3, 4

PETITION FOR WRIT OF CERTIORARI TO THE SEVENTH CIRCUIT COURT OF APPEALS

PRAYER

Guy Altobello, William Hanhardt, and Joseph Basinski respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The decision of the court of appeals is published at 361 F.3d 382. App. 1-23. The district court judgment for petitioner, Guy Altobello, is set forth at App. 24-38. The district court judgment for petitioner, Joseph Basinski, is set forth at App. 39-53. The district court judgment for petitioner, William Hanhardt, is set forth at App. 54-71.

JURISDICTION

The judgment of the court of appeals was entered on March 16, 2004. A timely petition for rehearing filed by Mr. Altobello on March 30, 2004 was denied on May 7, 2004. App. 72. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution provides in pertinent part:

No person shall be . . . deprived of life, liberty, or property, without due process of law.

2. The Sixth Amendment to the United States Constitution provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to . . . trial, by an impartial jury.

STATEMENT OF THE CASE

On October 19, 2000, Petitioners were charged in a two-count RICO indictment for having engaged in an interstate jewelry theft conspiracy.[1] Following the district court's denial of Petitioners' motion to suppress Title III wiretap materials, Petitioners entered guilty pleas. In sentencing the Petitioners, the district court, over the Petitioners' objections, increased their offense levels and imposed upward departures requested by the government.

Petitioner Guy Altobello: Mr. Altobello entered a "blind" guilty plea to a RICO conspiracy charge. In pleading guilty, Mr. Altobello made limited admissions, taking the position that his participation in the conspiracy commenced around 1995, as opposed to an earlier date suggested by the government.

Mr. Altobello was initially sentenced on May 28, 2002. At that sentencing hearing, the government attorney observed that "[v]irtually everything" was at issue. Tr. 17. The district judge imposed a sentence of 65 months incarceration. Included in the sentence calculation was (1) a

[1] The November 16, 2000 Superseding Indictment made only clerical changes.

two-level enhancement for obstruction of justice pursuant to U.S.S.G. § 3C1.1; (2) a two-level enhancement for "theft from the person of another" pursuant to U.S.S.G. § 2B1.1(b)(2); and (3) a two-level upward departure for the use of organized crime connections to facilitate the offense, a judicially-crafted departure not expressly provided in the United States Sentencing Guidelines.

Mr. Altobello appealed these sentencing enhancements to the United States Court of Appeals for the Seventh Circuit. On appeal, the Seventh Circuit vacated only the obstruction of justice enhancement. *United States v. Hanhardt*, 361 F.3d 382, 389-393 (7th Cir. 2004), App. 9-12.

With respect to the organized crime upward departure, the government contended in its Seventh Circuit brief that Mr. Altobello was a member of a Chicago "street crew." *See* Govt's CA Brief, p. 44. In his reply, brief, Mr. Altobello asserted that there was no evidence regarding his membership in the "street crew." *See* Deft Altobello Reply Brief, p. 2. At oral argument in the Seventh Circuit, the government *conceded* Altobello's position. The AUSA stated that the defense was "correct" and that the government's inclusion of Altobello the "street crew" was a "misstatement" for which the government "apologize[d]." www.ca7.uscourts.gov/farg/arg.fwx?caseno=02-2253&submit=showdkt&yr=02&num=2253.

In spite of the government's concessions, the Seventh Circuit affirmed the upward departure. In its opinion, the Seventh Circuit copied – verbatim – the portion of the government's appellate brief on the upward departure point. *Compare Hanhardt*, 361 F.3d at 392-93, App. 17-19 *with* Govt's CA Brief, pp. 44-47. Mr. Altobello raised this

matter in a rehearing petition, which was denied without opinion.[2]

Petitioner William Hanhardt: Mr. Hanhardt was initially sentenced on May 2, 2002 to 188 months incarceration. Included in the sentence calculation was a two-level enhancement for obstruction of justice pursuant to U.S.S.G. § 3C1.1 for his attempt to commit suicide, as well as a two-level enhancement for "theft from the person of another" pursuant to U.S.S.G. § 2B1.1(b)(2), both of which had been objected to. On March 16, 2004, the United States Court of Appeals for the Seventh Circuit vacated the obstruction enhancement but affirmed the § 2B1.1(b)(2) enhancement. *Hanhardt*, 361 F.3d at 387-89, 391-92, App. 6-9, 12-14, 15.[3]

Petitioner Joseph Basinski: Mr. Basinski was sentenced on May 7, 2002 to 108 months incarceration. Included in the sentence calculation was (1) a two-level enhancement for obstruction of justice pursuant to U.S.S.G. § 3C1.1; (2) a two-level enhancement for "theft from the person of another" pursuant to U.S.S.G. § 2B1.1(b)(2); (3) a four-level "role in the offense" enhancement for being a "organizer or leader" under U.S.S.G. § 3B1.1(a); and (4) a two-level upward departure for the use of organized crime connections to facilitate the

---

[2] On May 17, 2004, the Seventh Circuit issued the mandate (which required district court *vacatur* of the obstruction of justice enhancement) in Mr. Altobello's case. On June 18, 2004, the district court sentenced Mr. Altobello to 53 months incarceration.

[3] The removal of the obstruction enhancement resulted in the May 25, 2004 reduction, on remand, of Mr. Hanhardt's sentence to 141 months incarceration, included in which was the objected to § 2B1.1(b)(2) "theft from the person of another" enhancement.

offense. Mr. Basinski had objected to all of these increases, although with respect to "role in the offense," he had agreed to a three-level enhancement for being a "manager or supervisor" under § 3B1.1(b), and thus had objected only to the additional point that resulted from the higher, objected-to status of being an "organizer or leader" under § 3B1.1(a). Mr. Basinski's sentence was affirmed on appeal. *Hanhardt*, 361 F.3d at 386-87, 391-94, App. 4-6, 15-20.

REASONS FOR GRANTING THE PETITION

I. THE FIFTH AND SIXTH AMENDMENTS TO THE UNITED STATES CONSTITUTION REQUIRE THAT ANY OFFENSE LEVEL INCREASE OR UPWARD DEPARTURE UNDER THE UNITED STATES SENTENCING GUIDELINES TO BE BASED ON FACTS PROVEN BY THE GOVERNMENT BEYOND A REASONABLE DOUBT TO A JURY OR ADMITTED BY THE DEFENDANT

On June 24, 2004, this Honorable Court issued its decision in *Blakely v. Washington*, ___ U.S. ___, 124 S.Ct. 2531 (2004). *Blakely* held that the Sixth Amendment required a jury finding on facts that form the grounds for a sentencing increase under Washington state law.

Blakely addressed Washington's sentencing guidelines. In a footnote, *Blakely* noted that the United States Sentencing Guidelines were not before the Court. *Blakely*, ___ U.S. ___, 124 S.Ct. at 2538 n. 9. This Court "expressed no opinion" on the federal sentencing guidelines. *Id.*

Justice O'Connor's *Blakely* dissent pointed out that the government, as *amicus curiae,* had not posited a

meaningful distinction between Washington's guideline sentencing system and the federal government's, and predicted that "[e]very sentence imposed under such guidelines in cases currently pending on direct appeal is in jeopardy." *Blakely*, 124 S.Ct. at 2549. In addition, Justice Breyer, in dissent, articulated uncertainty as to how the federal sentencing guidelines could be distinguished and thus believed that federal prosecutions were affected by the Court's decision. *Blakely*, 124 S.Ct. at 2561.

It is the Petitioners' position that the United States Constitution is the source for *Blakely*'s holding. Consequently, the rule recognized in *Blakely* applies to the federal sentencing guidelines. This means that any offense level increase that depends on facts found by judge under a preponderance of the evidence standard violates the Fifth and Sixth Amendments to the United States Constitution to the extent it is not supported by a jury finding or defendant's admission.

In a case decided on the same day as *Blakely*, this Court noted that "[w]hen a decision of this Court results in a 'new rule,' that rule applies to all criminal cases still pending on direct review." *Schriro v. Summerlin*, ___ U.S. ___, 124 S.Ct. 2519 (2004); *see also Yates v. Aiken*, 484 U.S. 211, 215-16 (1988); *Griffith v. Kentucky*, 479 U.S. 314, 322 (1987). Because this case is presently on direct review, the constitutional rule recognized in *Blakely* governs the outcome.

All Petitioners have been subjected to increases in their sentencing guideline offense levels based on facts that were found by a judge using a preponderance of the evidence standard. The facts supporting the sentencing enhancements and upward departures were not admitted

by the Petitioners in their guilty pleas. In fact, the Petitioners vigorously, but unsuccessfully, contested various sentencing enhancements and upward departures as detailed above.

Since *Blakely*, courts have reached divergent results over whether *Blakely* applies to the federal sentencing guidelines. The Sixth Circuit has held that the United States Sentencing Guidelines are no longer mandatory. *United States v. Montgomery*, 2004 WL 1562904 (6th Cir., July 14, 2004). In a 2-1 decision, the Seventh Circuit applied *Blakely* to the federal sentencing guidelines. *See United States v. Booker*, 2004 WL 1535858 (7th Cir., July 9, 2004). Some district courts have reached a similar result. *See United States v. Shamblin*, ___ F.Supp.2d ___, 2004 WL 1468561 (S.D.W.Va., June 30, 2004); *United States v. Croxford*, ___ F.Supp.2d ___, 2004 WL 2041551564 (D.Utah, July 12, 2004). In fact, *Croxford* held the federal sentencing guidelines unconstitutional. The Fifth Circuit, however, has ruled that *Blakely* does not govern the federal sentencing guidelines. *See United States v. Pineiro*, ___ F.3d ___, 2004 WL 1543170 (5th Cir., July 12, 2004). The Second Circuit has certified issues regarding *Blakely's* applicability to the federal sentencing guidelines to this Court. *See United States v. Penaranda*, ___ F.3d ___, 2004 WL 1551369 (July 12, 2004).

The importance of the issue presented herein cannot be understated. Thousands and thousands of pending cases and appeals are potentially affected. *See Penaranda*, 2004 WL 1543170 * 6. Courts, lawyers, defendants, the public and prosecutors are profoundly uncertain as to how to proceed on pending cases. This Court obviously is the only judicial tribunal that can definitively resolve the matter.

CONCLUSION

WHEREFORE, Petitioners Guy Altobello, William Hanhardt, and Joseph Basinski respectfully pray that this Honorable Court grant this petition and issue a writ of *certiorari* to vacate or review the judgment of the Seventh Circuit, remand for further consideration and/or grant any other appropriate relief.

Respectfully submitted,

MARC W. MARTIN
Counsel of Record
53 W. Jackson Blvd., Suite 1420
Chicago, IL 60604
(312) 408-1111
Attorney for Petitioner
Guy Altobello

JEFFREY COLE
COLE & STAES
321 Plymouth Ct., Suite 1150
Chicago, IL 60604
(312) 697-0200
Attorney for Petitioner
William Hanhardt

ANDREW STAES
COLE & STAES
321 Plymouth Ct., Suite 1150
Chicago, IL 60604
(312) 697-0200
Attorney for Petitioner
Joseph Basinski

361 F.3d 382

United States Court of Appeals,
Seventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
William HANHARDT, Joseph Basinski,
Guy S. **Altobello,** and William R. Brown,
Defendants-Appellants.

Nos. 02-2253, 02-2254, 02-2465, 02-3091, 02-3625.

Argued Sept. 5, 2003.
Decided March 16, 2004.
Rehearing Denied May 7, 2004.

John F. Podliska (argued), John J. Scully, Office of U.S. Atty., Chicago, IL, for Plaintiff-Appellee.

Jeffrey N. Cole (argued), Cole & Staes, Chicago, IL, for Defendant-Appellant William Hanhardt.

Andrew T. Staes (argued), Cole & Staes, Chicago, IL, for Defendant-Appellant Joseph Basinski.

Marc W. Martin (argued), Chicago, IL, for Defendant-Appellant Guy S. Altobello.

John M. Beal, Chicago, IL, for Defendant-Appellant William R. Brown.

Before BAUER, POSNER, and DIANE P. WOOD, Circuit Judges.

BAUER, Circuit Judge.

William Hanhardt, Joseph Basinski, Sam DeStefano, Paul Schiro, and Guy Altobello were indicted for one count of racketeering conspiracy in violation of 18 U.S.C. § 1962(d). In a second count, Hanhardt, Basinski, Schiro,

and William Brown were charged with conspiracy to transport stolen property in interstate commerce in violation of 18 U.S.C. § 371. The indictment also contained a forfeiture allegation seeking forfeiture of $4,845,000, miscellaneous jewelry, gems and watches, and certain real estate of Hanhardt and DeStefano. All of the defendants pleaded guilty and were sentenced to imprisonment for periods ranging from 25 months to 188 months. There are several issues raised on appeal relating to the sentencing decisions of the district court.[1] We affirm in part, reverse in part, and remand for new sentencing consistent with this opinion.

BACKGROUND

Count One

Between 1980 and April 1998, William Hanhardt, Joseph Basinski, Paul Schiro, Sam DeStefano, and Guy Altobello engaged in an organized nationwide scheme to identify and target for theft more than 100 jewelry salespersons traveling in interstate commerce with lines of jewelry valued in excess of $40 million. Throughout this period, the conspirators committed at least nine jewelry thefts totaling more than $5 million in at least seven states, including Arizona, California, Michigan, Ohio, Texas and Wisconsin.

Hanhardt, the leader of the enterprise, supervised Basinski and together they directed the activities of the other conspirators. Hanhardt directed in the gathering of

[1] The district court properly used the 1997 version of the Federal Sentencing Guidelines and therefore citations in this opinion refer to that version.

information regarding potential jewelry theft targets and in the surveillance of such individuals to determine the best time and place to steal jewelry from cars and hotels. He also used Chicago police officers to run searches on law enforcement computers to find information about jewelry salespersons. He also had a private investigator gather personal information on targets. Hanhardt retired from the Chicago Police Department in 1986. However, while he was a sworn officer, Hanhardt committed at least one theft with Basinski and other conspirators; an October 8, 1984 theft of one hundred eighty Baume & Mercer watches valued at approximately $310,000 from Paul Lachterman in Glendale, Wisconsin.

Basinski identified potential targets by doing physical surveillance, making telephone calls and running database searches. He also recruited additional members for the organization and fenced stolen jewelry. Altobello provided other members with information about jewelry salespersons who conducted business with Altobello Jewelers, Inc., a Chicago area retail jewelry store, including, information regarding the identity of such persons, the nature and quality of their goods, and the most opportune time to steal from them.

Count Two

In October 1996, Brown joined Hanhardt, Basinski, and Schiro in a scheme to steal watches valued at $500,000 from Illinois jewelry salesman Paul Lachterman. They planned to steal the watches while Lachterman traveled through Wisconsin and Indiana and then to transport the stolen watches back to Illinois. Hanhardt and Basinski had already stolen from Lachterman in 1984

and decided to target him again. Between April and September of 1996, they stalked Lachterman, gathered more information on him and managed to make a duplicate key to the trunk of his car. Basinski contacted Schiro in Phoenix who drove to Chicago, bringing Brown with him, to assist in the theft. On October 1, 1996, the four conspirators followed Lachterman in two cars as he drove to Wisconsin and met with customers. On October 2, 1996, they followed him as he drove to Indiana. There, while Lachterman was in a restaurant, Basinski and the others used the duplicate key and stole a case of watches valued at $58,000, which had been provided by the FBI. Realizing that the case contained only a fraction of the value they expected, the conspirators returned the case to the trunk.

Each of the defendants pleaded guilty to the charges and were sentenced to between 25 months and 188 months of imprisonment. They appeal these sentences.

ANALYSIS

I. Responsibility of Hanhardt and Basinski for the 1995 Armed Robbery of Esagh Kashimallak

Hanhardt and Basinski challenge the court's finding that they were responsible for the 1995 robbery. At the sentencing of both Hanhardt and Basinski, the government presented evidence that the conspiracy charged in the first count of the indictment had included the armed robbery of Esagh Kashimallak in 1995. Based on the facts of that incident, the government sought an enhancement for the physical restraint of a victim (§ 3A1.3) (2 levels) and an upward departure for use of a weapon in the commission of a crime (§ 5K2.6) (6 levels) and bodily injury to a victim (§ 2B3.1) (2 levels). CGV16;

Tr4/29/02/ /60-659;5/2/02/ /719-21; Tr5/6/02/ /12.34. After hearing sworn testimony from the victim and FBI Special Agent Edward McNamara, the district court judge found by a preponderance of the evidence that Hanhardt was responsible for the armed robbery. Tr5/1/02/ /667. However, the court declined to impose either the upward departure or the enhancement and sentenced Hanhardt to the high end of the guideline range (151-188 months). Tr5/2/02/ /725-26. A week later, the court found Basinski also responsible for the 1995 armed robbery and sentenced him to the high end of the guideline range (87-108 months), declining to impose the upward departure or the enhancement. Tr5/6/02/ /37, 58-66. The court did not specifically attribute the high end sentence to the finding that Hanhardt and Basinski were responsible for the armed robbery. *Id.*

The district court's findings that Hanhardt and Basinski were responsible for armed robbery of Kashimallak is a factual finding reviewed for clear error. *United States v. Ross,* 905 F.2d 1050, 1054 (7th Cir.1990). The court's finding that Kashimallak and the FBI agent were credible is entitled to due deference. *Id.*; 18 U.S.C. § 3742(d). The court did not increase either defendant's offense level and there is no indication in the record that the court's finding of responsibility had any bearing on its decision to sentence them at the high end of the applicable guideline range.

Where a defendant does not request specific findings pursuant to 18 U.S.C § 3553(c) at the time of sentencing, this court has held that the issue is waived. *United States v. Caicedo,* 937 F.2d 1227, 1236 (7th Cir.1991); *United States v. Burns,* 128 F.3d 553, 556 (7th Cir.1997). In this case, the defendants had the opportunity to ask the court

to make clarifications and did not. Therefore, the district court's ruling on this issue will not be disturbed.

II. Increased Offense Levels Based on Obstruction of Justice for Hanhardt and Altobello

The court sentenced both Hanhardt and Altobello to a higher offense level based on a determination that both obstructed justice. This court reviews the district court's application of sentencing guidelines de novo. *United States v. Williams,* 272 F.3d 845, 864 (7th Cir.2001). The sentencing court's determination that a defendant has obstructed justice is a finding of fact to be reviewed under the clearly erroneous standard. *United States v. Teta,* 918 F.2d 1329, 1332 (7th Cir.1990); *United States v. Jackson,* 935 F.2d 832, 849 (7th Cir.1991). We find that the obstruction of justice enhancements applied to both Hanhardt and Altobello were clearly erroneous.

A. Hanhardt

Hanhardt's trial was set only a few weeks after he had undergone testicular cancer surgery, for October 16, 2001. On that morning, his counsel asked for a continuance because of his client's inability to be in court. It later came to light that the defendant had attempted suicide by drug overdose and was in the hospital. Based on that information, the court found that Hanhardt was responsible for his failure to appear in court as required by his bond. The court issued an arrest warrant, staying it until October 20, 2001, when the defendant was due in court. If Hanhardt did not show up on the 20th then the warrant was to have been executed.

On October 18, 2001, the parties returned to court on the government's emergency motion to inform the court that Hanhardt had made arrangements to be admitted to an inpatient program at another hospital. The new hospital required him to stay five to ten days which would cause him to miss his scheduled day in court. The government argued that Hanhardt was intentionally arranging to violate the court's order to be in court on the 20th. The court ordered the execution of the warrant and set a trial date for the 25th of October.

At that time, the court stated:

> The court also notes that Hanhardt apparently had no intention of appearing in court on October 20th, as he was planning to be hospitalized as part of an inpatient mental health treatment program. This anticipated non-appearance causes the court to order immediate execution of the arrest warrant to ensure Hanhardt's appearance.

R239/ /6.

At sentencing, the court imposed a two-level enhancement of Hanhardt's offense level for obstruction of justice under U.S.S.G. § 3C1.1. The court based the enhancement on its finding that Hanhardt acted willfully and with the specific intent not to be present in court as ordered both on October 16 and October 20 and that he had the intent to impede the prosecution of his case. The court stated:

> He voluntarily, knowingly, and with reckless disregard placed controlled substances into his own body. That he may have taken more than prescribed was his own decision. He did it alone. It was a voluntary act on his part. He caused the result. It was his intention then

> not to be in the courtroom to enter his plea of guilty or to appear for trial. That he may have other reasons in addition to those for doing what he did is not of major consequence.

Tr4/29/02/ /50-60. The court found authority for its ruling in the Federal Sentencing Guidelines. Section 3C1.1 of the guideline states: "If the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the investigation, prosecution, or sentencing of the instant offense, increase the offense level by 2 levels." U.S.S.G. § 3C1.1.

We find that the court's decision to impose an obstruction of justice enhancement based on Hanhardt's attempted suicide to be clearly erroneous. "A finding of fact is clearly erroneous only if, after reviewing the entire evidence, we are left with the definite and firm conviction that a mistake has been committed." *United States v. McGill,* 32 F.3d 1138, 1143 (7th Cir.1994);[2] *quoting United States v. Beal,* 960 F.2d 629, 632 (7th Cir.), *cert. denied,* 506 U.S. 880, 113 S.Ct. 230, 121 L.Ed.2d 166 (1992). After reviewing all the evidence, we believe that a mistake has been made in this case.

We do not believe that an attempted suicide can be considered an obstruction of justice. In the *United States v. McGill,* we affirmed an enhancement because the district court had determined that the defendant had tried to

---

[2] Evidence that the defendant was found in his cell standing on top of the toilet with his head protruding through a hole in ceiling tiles supported an enhancement of sentence for two levels for obstruction of justice; we held the trial court's conclusion that defendant was attempting to escape rather than attempting suicide was not clearly erroneous. *United States v. McGill,* 32 F.3d 1138 (7th Cir.1994).

escape rather than commit suicide, a finding that was not erroneous. 32 F.3d at 1143. Implicit in that decision is the understanding that suicide would not be an obstruction. *Id.*

The defendant argues that Hanhardt's attempted suicide reflects his specific intent to *die,* rather than his intent not to appear in court the following day. The U.S. Probation Officer explained that:

> If the defendant's intention was solely to miss the court hearing, he could have simply failed to appear or even fled from this district. In this case, the defendant chose a more drastic and potentially fatal action. It is therefore the assessment of the undersigned that the defendant's legitimate, albeit wilfull, attempt to commit suicide transcends the desire to miss a court hearing. . . .

(HBr 31) (R362-17 at 48; R306 at 16). The nature of suicide does not lend itself to a clear understanding of an individual's motivation other than the obvious intent to end his life. We agree with U.S. Probation's characterization of the defendant's actions and reverse the district court's decision to enhance his sentence based on an obstruction of justice.

B. Altobello

At sentencing, the court applied a two-level increase to Altobello's sentence based on an obstruction of justice enhancement provided for in U.S.S.G § 3C1.1. The obstruction of justice sentencing guideline at issue provides:

> If the defendant willfully obstructed justice or impeded, or attempted to obstruct or impede, the administration of justice during the course of an

> investigation, prosecution, or sentencing of the instant offense, increase the offense level by 2 levels.

U.S.S.G. § 3C1.1 (1997). The government sought this enhancement based on unsworn false statements Altobello made to law enforcement officers in 1998.

On March 10, 1998, Altobello was confronted by FBI agents. After hearing a tape-recording of an intercepted conversation, Altobello admitted that his voice was on the tape, that he had done a "bad thing." FBI 3.02, GSSS, Ex.C. (report summarizing FBI interview with Altobello). However, at that time, Altobello did not admit committing any other crime and denied criminal associations with certain individuals.

Because information regarding the extent of Altobello's involvement later contradicted his unsworn statements, the district court determined that Altobello had impeded the investigation and therefore obstructed justice. We disagree and vacate the enhancement.

The district court judge believed that "there must be some consequence to what Altobello said or failed to say" when confronted by the FBI agents in 1998. Tr. 62; App. 18. This court has held that "the obstruction of justice enhancement does not apply to any and all obstructive conduct that a defendant may have attempted or committed." *United States v. Polland,* 994 F.2d 1262, 1269 (7th Cir.1993). There is not a presumption in favor of an obstruction enhancement when a defendant makes unsworn, out-of-court false statements to law enforcement

officers. In fact, Note 4(b)[3] states that "making false statements, not under oath, to law enforcement officers" is included in the "list of examples of the types of conduct that, absent a separate count of conviction for such conduct, do *not* warrant application of this enhancement, but ordinarily can appropriately be sanctioned by the determination of the particular sentence within the otherwise applicable guideline range." U.S.S.G. § 3C1.1, Application Note 4(b) (emphasis added). However, if the defendant's false statement "significantly obstructed or impeded the official investigation or prosecution," the obstruction enhancement may be imposed. U.S.S.G. § 3C1.1, Application Note 3 (1997).[4]

Significant and actual obstruction or impediment must be shown by the government. *See United States v. Shriver,* 967 F.2d 572, 575 (11th Cir.1992). The government failed to establish that Altobello's unsworn statements significantly impeded its investigation. The government only offered the conclusory claim that Altobello's statements "significantly obstructed or impeded the official investigation of Basinski, Hanhardt and the co-conspirators." (Government's Consolidated Version of Offense (CGV) 36-37). This was an insufficient basis for an obstruction increase. *See United States v. Jackson,* 935 F.2d 832, 850 (7th Cir.1991) ("the government's brief statement that it 'expended resources . . . only to find out that Gines' information was misleading' does not itself suffice to establish

---

[3] Application note (4)(b) in the 1997 version of § 3B1.1 of the Federal Guidelines is identical to note (5)(b) in the 2003 version.

[4] Application Note 3 is identical to Application Note 4 in the 2003 version of the guidelines.

that Gines hampered the investigation in any significant way").

In the government's supplemental sentencing submission, it essentially relies on the *potential* for Altobello's statements to have impeded the investigation, rather than evidence of actual impediment or hindrance. No government agents testified at Altobello's sentencing or otherwise say that his statements resulted in significant and actual investigative impediment. Consequently, we vacate the obstruction of justice enhancement from Altobello's sentence.

III. District Court's Denial of Downward Adjustments for Acceptance of Responsibility for Hanhardt and Altobello

At sentencing the court denied downward adjustments for acceptance of responsibility for both Hanhardt and Altobello. We review the district court's finding as to whether a defendant has accepted responsibility for his criminal activity for clear error. *United States v. Taliaferro,* 211 F.3d 412, 414 (7th Cir.2000). Whether a defendant has accepted responsibility is a "context-specific" inquiry. *United States v. Frykholm,* 267 F.3d 604, 610 (7th Cir.2001); *quoting United States v. Branch,* 195 F.3d 928, 937 (7th Cir.1999). Upon review, the determination of the sentencing judge is entitled to great deference. U.S.S.G. § 3E1.1, Application Note 5. Absent an abuse of discretion, we will not disturb a sentencing judge's decision. *United States v. Lange,* 312 F.3d 263 (7th Cir.2002). We find the district court did not abuse its discretion in this instance and affirm the denial of acceptance of responsibility points.

A. Hanhardt

Hanhardt entered a blind plea to the indictment on October 25, 2001, nine days after the case was scheduled to begin trial. He was the last of the five defendants then before the court to enter a guilty plea. His lawyer read a one and a half page statement to the court that admitted to the elements of the offense. After the government detailed the evidence that would have been presented against him, Hanhardt responded, "I don't agree with everything he (Assistant United States Attorney Scully) said." Tr10/25/01/ /41. When the court asked Hanhardt whether he was pleading guilty to Count One as alleged in the indictment, Hanhardt responded, "In its entirety, no, sir." *Id.*

Section 3E1.1 of the sentencing guidelines is designed to award a defendant who demonstrates contrition through an honest and full account of his offense conduct. *United States v. Larkin,* 171 F.3d 556, 559 n. 4 (7th Cir.1999). The sentencing court can require that the defendant provide a candid and full explanation of the circumstances surrounding the offense of conviction. *United States v. Hammick,* 36 F.3d 594, 600-01 (7th Cir.1994).

In addition, the act of pleading guilty does not automatically entitle a defendant to the reduction. *Id.*; U.S.S.G. § 3E1.1, Application Note 3. The sentencing judge is also required to look beyond "formalistic expressions of culpability and to determine whether the defendant has manifested an acceptance of personal responsibility for his offense in a moral sense." *Id.* at 601; *see also United States v. Beserra,* 967 F.2d 254, 256 (7th Cir.1992). Based on the foregoing, we affirm the district court's decision to deny

Hanhardt's downward departure for acceptance of responsibility.

B. Altobello

Altobello was denied a downward adjustment for acceptance of responsibility because he falsely denied the extent of his involvement in the theft conspiracy. Tr5/28/02/ /60-68. On September 26, 2001, Altobello pleaded guilty, admitting that his role in the enterprise was to provide information about traveling jewelry salespersons who came to his son's retail jewelry store, Altobello's Jewelers, Inc. Tr9/26/01/ /14-17. He admitted that the information he provided to Basinski included salespersons' names, the kind of merchandise they were carrying, the types of vehicles they were driving and the license plate for those vehicles, and how often they came to the store. *Id.* He also claimed that he had provided such information only on three salespersons in 1996, a period in which the government had substantial evidence including a recorded telephone conversation between Altobello and Basinski and telephone records showing substantial contact with Basinski. In other words, Altobello admitted only to that which was impossible to deny. The court believed the government's argument that Altobello had been in contact with the conspirators since 1993, offering information for the first Kashimallak robbery.

The district court judge denied Altobello's downward departure for acceptance of responsibility because he did not believe that he was truthful about the extent of his involvement in the conspiracy. There is no indication of an abuse of discretion, so we affirm the district court's denial of acceptance of responsibility.

IV. Two-Level Enhancement as to Hanhardt, Basinski, and Altobello for Theft from the Person of Another

Under 18 U.S.C § 3742(e), a court of appeals reviewing a sentence imposed under the sentencing guidelines shall accept the findings of fact of the district court unless they are clearly erroneous and shall give due deference to the district court's application of the guidelines to the facts. *United States v. Mallon,* 345 F.3d 943, 945 (7th Cir.2003).

The district court enhanced the defendants' sentences pursuant to § 2B1.1(b)(2) based on evidence of the circumstances surrounding two separate thefts. On June 30, 1992, Melvin Draftz, a traveling jewelry salesman was distracted by a bump from behind. Shortly after, he realized his briefcase, containing his $1.3 million jewelry line, was gone from the floor by his side. On May 7, 1994, Roland Naftule was similarly victimized when he was bumped from behind causing his bag of jewelry to slip from his grasp and disappear.

A. Factual Finding Regarding Theft from a Person.

The district court judge determined the facts warranted the theft of person enhancement provided for in § 2B1.1 of the sentencing guidelines. Theft from the person of another "means theft, without the use of force, of property that was *being held by another person or was within arms' reach.* Examples include pick-pocketing and non-forcible purse-snatching, such as the theft of a purse from a shopping cart." U.S.S.G. § 2B1.1, Application Note 1 (emphasis added).

Whether or not the victims' bags were *within arms' reach* is a factual determination and is reviewed for clear error. *See United States v. Mijangos,* 240 F.3d 601, 604 (7th Cir.2001). We believe it is a reasonable determination, based on these facts, that the victims' bags were within their reach and so affirm the district court's finding.

B. Application of the Enhancement to Altobello

In addition, Altobello challenges the court's application of this enhancement to him because he claims he was not part of these specific thefts. He argues that the court misapplied the principles of conspiracy law. At sentencing, the court stated:

> [It] was foreseeable that there would be theft from the person, and it was, therefore, foreseeable by Mr. Altobello that someone would take from the person of Naftule the jewelry that was contained in the bag that he had at arm's reach. He need not have known specifically the name of Mr. Naftule, but that other conspirators were personally robbing from the persons of others was clearly foreseeable to Mr. Altobello. And in fundamental Pinkerton conspiracy law, he is accountable.

Tr4/29/02/ /78.

Altobello persists that there was no evidence that he agreed to a theft from Naftule's person and therefore that theft was beyond the scope of his conspiratorial agreement. Altobello is incorrect. A defendant need not know of a co-conspirator's actions for those actions to be reasonably foreseeable to the defendant. *United States v. Hernandez,* 325 F.3d 811, 817 (7th Cir.2003). The court's finding that the circumstances of the Naftule theft were foreseeable to

Altobello was not clearly erroneous and so to apply the enhancement to Altobello was not an abuse of discretion.

V. Organized Crime Upward Departure for Basinski, Altobello, and Brown

We review the district court's application of sentencing departures de novo, but factual findings are reviewed for clear error. 18 U.S.C. § 3742(e); *Mallon,* 345 F.3d at 946.

A. Background

It has long been understood that organized crime derives much of its power through illegal endeavors, including the theft and fencing of property. *United States v. Turkette,* 452 U.S. 576, 588, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981). The Chicago Outfit (hereinafter the "Outfit") is one of the organized criminal enterprises in the United States. *United States v. Rainone,* 32 F.3d 1203, 1209 (7th Cir.1994). The Outfit "is the clearest example of a gang operating on such a scale, with such success, over such a long period of time that the danger it poses to society is not adequately reflected in the guideline range." *Id.*

The Outfit operates through "street crews," *United States v. Salerno,* 108 F.3d 730, 733 (7th Cir.1997); *United States v. DiDomenico,* 78 F.3d 294, 297-98 (7th Cir.1996), and several of the conspirators in this case, including all three of the defendants who challenge the organized crime upward departure on appeal, were members of the Ogden/Grand Avenue crew controlled by Joseph Lombardo.

Information from confidential informants identified Basinski and Brown, along with Schiro and D'Antonio, as members of Joseph Lombardo's Grand Avenue Crew of the

Chicago Outfit and described that group as an organized crime jewelry theft crew that worked closely with Hanhardt. CGV 45-52. A witness and an informant identified Altobello as a jewelry fence for organized crime. CGV39, 53.

Hanhardt stipulated at sentencing that as to the RICO conspiracy and the jewelry theft conspiracy, the conspirators used organized crime connections in the commission of the crimes. DeStefano agreed in his written plea agreement to a two-level enhancement because organized crime connections were used in the commission of the RICO offenses. Tr55/1/02/ /640-46. Schiro is not appealing that finding. The court found an organized crime connection for which Basinski, Altobello, and Brown received a two-level upward departure. Tr/5/6/02/ /21, 26; 5/28/02/ /166-67; 7/31/02/ /41-42.

Where membership in or association with the Outfit is used to further the criminal activity for which a defendant is convicted, an upward departure under the guidelines is appropriate. *United States v. Zizzo,* 120 F.3d 1338, 1361 (7th Cir.1997); *United States v. Schweihs,* 971 F.2d 1302, 1316-17 (7th Cir.1992).

The defendants dispute their connection or membership with organized crime and argue that the unsworn statements of informants, the identity of whom has not been disclosed by the government, cannot provide a sustainable basis for an upward departure. We disagree. Due Process does not prohibit the use at sentencing of out-of-court declarations by unidentified informants where those statements are supported by sufficient corroboration. *United States v. Fatico,* 579 F.2d 707, 713 (2d Cir.1978). The Hanhardt stipulation, DeStefano's agreement, the crimes,

and the participants in them, all corroborated the informants. *Id.* By all this evidence, it is more likely than not that the conspirators are participants in organized crime. *Id.* Therefore, we affirm the upward departure for connection to organized crime as to Basinski, Altobello, and Brown.

VI. Basinski's Role as a Leader and an Organizer

At sentencing the district court judge added a four-level adjustment to Basinski's sentence based on his role in the conspiracy. Guideline § 3B1.1(a) permits this adjustment if the defendant was an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive. U.S.S.G § 3B1.1. Whether Basinski was a leader in the conspiracy for purposes of § 3B1.1 is a question of fact which we review for clear error. *United States v. Vivit,* 214 F.3d 908, 922 (7th Cir.2000).

To be classified as an organizer or leader, a defendant "may simply have organized or in some way directed" another member of the conspiracy. *United States v. Mustread,* 42 F.3d 1097, 1104 (7th Cir.1994). The upward adjustment is applicable to each leader in a conspiracy and more than one conspirator may qualify as an organizer or a leader. *United States v. McClinton,* 135 F.3d 1178, 1191 (7th Cir.1998). *See* U.S.S.G § 3B1.1(a), Application Note 4.

The wiretap that intercepted the conversations of Hanhardt and Basinski showed that both exercised decision-making authority. The two organized and planned the identification and stalking of jewelry salespersons and the theft and sale of jewelry. Basinski recruited and supervised knowing accomplices and unknowing participants to

assist in the theft of jewelry and the sale of stolen jewelry. In dozens of recorded conversations, Hanhardt and Basinski decided whom to target in addition to planning and organizing the commission of the thefts.

Basinski insists that the district court rejected the three-level enhancement determined by the probation officer, made no findings to support its conclusion, and reached its conclusion based upon only a brief statement by the government at sentencing. We disagree. The record is clear that the court relied on the entire record in reaching its decision. The court stated:

> It may well be that Mr. Hanhardt was the ultimate leader, but clearly he and Mr. Basinski were simultaneously the leader[s] and organizers of the conspiracy. And in making this determination the Court has considered the 165-page Santiago proffer, as well as the information in support of the Title III tapes. And the Court has considered the plea agreements of certain defendants, as well as, indeed, the blind plea of Mr. Hanhardt to Count 1 and Count 2. As the Court has examined all these submissions, including the submissions of Mr. Basinski himself, it is clear that both he and Hanhardt were leaders and organizers of the conspiracy.

Tr5/06/02/ /12-13. It is clear that the district court considered the entire record before deciding. The district court's conclusion that Basinski was a leader and an organizer is supported by the record and therefore not clearly erroneous.

VII. Denial of a Downward Adjustment for Minor Role for Altobello

Altobello was denied a two-level downward adjustment for minor participation pursuant to § 3B1.2(b) of the guidelines. A district court's decision to deny a defendant a downward adjustment for mitigating role in criminal activity under § 3B1.2 is a factual determination that is reviewed for clear error. *E.g., Schetz v. United States,* 901 F.2d 85, 87 (7th Cir.1990).

According to § 3B1.2(b), if the sentencing court finds that the defendant was a "minor participant" in the offense, his sentence may be decreased by two levels. *United States v. Corral,* 324 F.3d 866, 874 (7th Cir.2003). We have often held that a minor participant is "one who is substantially less culpable than the other participants." *Id.; United States v. Jones,* 55 F.3d 289, 293 (7th Cir.1995). However, we make this determination by examining "whether the defendant was a minor participant in the crime for which he was convicted, not whether he was a minor participant in some broader conspiracy that may have surrounded it." *Id.; quoting United States v. Brown,* 136 F.3d 1176, 1185-86 (7th Cir.1998). Though we apply this reduction infrequently, a defendant who seeks it must establish by a preponderance of the evidence that he is entitled to it. *United States v. Soto,* 48 F.3d 1415, 1423 (7th Cir.1995); *Corral,* 324 F.3d at 874.

In this case, the district court found that Altobello played an instrumental role in the offense by providing information to the other conspirators that enabled them to target the victims he identified. The principle means by which the conspirators identified their victims was by gaining access to industry trade shows and surveilling the traveling wholesale jewelers who attended those shows.

Altobello was a significant source of information about salespersons who came to Altobello Jewelers, Inc. He provided information about at least five salespersons who carried with them in excess of $2 million in jewelry and precious stones. In addition to identifying salespersons, Altobello provided information about the type and quality of merchandise they carried and how it was transported, their schedules, the vehicle license plates, and the type of vehicles they drove. The district court found that Altobello identified victims and provided crucial information about them to the other conspirators, making him an important and a significant contributor to the conspiracy.

Altobello's argument that he is significantly less culpable than the others because he did not participate in *all* of the conspiratorial activity is not enough to meet his burden. The district court's finding as to Altobello's role in the conspiracy is reasonable and not clearly erroneous. Therefore, we affirm the denial of a downward adjustment for a minor role for Altobello.

The district court's determination that Altobello joined the conspiracy at least as early as the 1993 robbery of Kashimallak and that all thefts from that point were reasonably foreseeable to him is reviewed for clear error. *United States v. Zarnes,* 33 F.3d 1454, 1474-75 (7th Cir.1994). Based on all the evidence that was before the district court, including circumstantial evidence of his involvement in the 1995 Kashimallak theft and robbery, the district court correctly determined that the evidence of Altobello's words and actions showed that he was a member of the conspiracy from at least 1993 and that he demonstrated a degree of commitment to the objectives of the conspiracy that made all thefts from 1993 reasonably

foreseeable to him. Tr5/28/02/ /77- 81, 86-87. The finding is not clearly erroneous and is affirmed.

Based on the foregoing reasons, we AFFIRM in part, REVERSE in part, and REMAND for new sentencing consistent with this opinion.

UNITED STATES DISTRICT COURT

NORTHERN	District of	ILLINOIS

UNITED STATES OF AMERICA

V.

GUY ALTOBELLO

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

(Docketed May 31, 2002)

Case Number: **00 CR 853-5**

RAY PIJON
Defendant's Attorney

THE DEFENDANT:

X pleaded guilty to count(s) ONE (superseding)

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 1962(d)	Racketeering Conspiracy	April 1998	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform act of 1984.

☐ The defendant has been found not guilty on count(s) _____

X Count(s) any remaining ☐ is X are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

May 28, 2002
Date of Imposition of Judgment

/s/ Charles R. Norgle, Sr.
Signature of Judicial Officer

JUDGE CHARLES R. NORGLE, SR.
Name and Title of Judicial Officer

May 28, 2002
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total total term of sixty five (65) months.

X The court makes the following recommendations to the Bureau of Prisons: Designation at F C I, Oxford, WI.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States marshal for this district:
☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

X The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

X before 2 p.m. on September 2, 2002.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

_____
By DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term three (3) years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

X The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL SUPERVISED RELEASE TERMS

Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is release.

Random drug testing shall not exceed 104 test per year.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$ 0.00	$ 4,845,000

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	*Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Victims listed in government's government's version	$4,845,000	$4,845,00	jointly and several
TOTALS	$_____	$_____	

☐ If applicable, restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

---

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ☐ fine and/or ☐ restitution. ☐ the interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D or, ☐ E below; or

B ☐ Payment to begin immediately (may be combined with ☐C, ☐ Dor, ☐E below); or

C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E X Special instructions regarding the payment of criminal monetary penalties:

Restitution is payable jointly and severally in equal monthly installments over the three year period of supervised release.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

ADDITIONAL FORFEITED PROPERTY

(See attached preliminary order of forfeiture.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 00 CR 0853-5
v.	)	Judge Charles R. Norgle Sr.
	)	
GUY ALTOBELLO	)	

PRELIMINARY ORDER OF FORFEITURE

This cause comes before the Court on motion of the United States for entry of a preliminary order of forfeiture as to specific property pursuant to the provisions of Title 18, United States Code, Section 1963, and Fed. R. Crim. P. 32.2, and the Court being fully informed hereby finds as follows:

(a) On November 17, 2000, a superseding indictment was returned charging defendant GUY ALTOBELLO and others with violations of the Racketeer Influenced and Corrupt Organizations Act pursuant to the provisions of 18 U.S.C. § 1962(d), among other violations;

(b) The indictment sought forfeiture to the United States of specific property pursuant to the provisions of 18 U.S.C. § 1963;

(c) On September 26, 2001, defendant GUY ALTOBELLO entered a voluntary plea of guilty to the indictment, including Count One, thereby making the property named in the indictment subject to forfeiture pursuant to 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3), which states in part:

> (a) Whoever violates any provision of section 1962 of this chapter . . . shall forfeit to the United States,
>
> (1) any interest the person has acquired or maintained in violation of Section 1962
>
> (2) any –
>
> (A) interest in;
>
> (B) security of;
>
> (C) claim against; or
>
> (D) property or contractual right of any kind affording a source of influence over; any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of Section 1962; and
>
> (3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of Section 1962.

(d) As a result of his violations of 18 U.S.C. § 1962(d), to which he pled guilty in Count One, the Court shall order forfeiture of funds and miscellaneous jewelry, gems and watches in the amount of $4,845,000, for which the defendant is liable, jointly and severally with his co-defendants, to the United States, pursuant to the provisions of 18 U.S.C. § 1963(a)(1),(a)(2), and (a)(3), which property represents all interests acquired and maintained in violation of 18 U.S.C. § 1962; any interest in; security of or claim against; or property or contractual right of any kind affording a source of influence over any enterprise which the person has established, operated, controlled,

conducted, or participated in the conduct of, in violation of Section 1962; and property constituting or derived from proceeds obtained, directly or indirectly, from the defendant's violation of 18 U.S.C. § 1962;

(e) Because funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000, are subject to forfeiture, the government requests that this Court enter a preliminary order of forfeiture, pursuant to 18 U.S.C. § 1963(a)(1), (a)(2) and (a)(3), forfeiting all right, title, and interest of defendant GUY ALTOBELLO in the foregoing property for disposition according to law;

(f) If any of the funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000, as a result of any act or omission on the part of the defendant:

1. cannot be located upon the exercise of due diligence;
2. has been transferred or sold to, or deposited with, a third party;
3. has been placed beyond the jurisdiction of the Court;
4. has been substantially diminished in value; or
5. has been commingled with other property which cannot be subdivided without difficulty;

the Court is authorized to order, pursuant to 18 U.S.C. § 1963(m), the forfeiture of any other property belonging to defendant GUY ALTOBELLO, up to the value of the funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000, to satisfy the judgment entered by the Court;

(g) The United States requests that the terms and conditions of this preliminary order of forfeiture entered by the Court be made part of the sentence imposed against defendant GUY ALTOBELLO and included in any judgment and commitment order entered in this case against him.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. That, pursuant to the provisions of 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3), and Fed. R. Crim. P. 32.2, all right, title, and interest of defendant GUY ALTOBELLO in the funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000, is hereby forfeited to the United States of America for disposition according to law;

2. Upon entry of a preliminary order of forfeiture, pursuant to the provisions of 18 U.S.C. § 1963(e), the United States Marshal shall seize and take custody of such cash and miscellaneous jewelry, gems, and watches, for disposition as the Attorney General may direct;

3. Further, pursuant to the provisions of 18 U.S.C. § 1963(1)(1), the United States Marshal shall publish notice of this order and of its intent to dispose of the property as the Attorney General may direct. The government may also, to the extent practicable, pursuant to statute, provide direct written notice to any person known to have alleged an interest in the property that is the subject of this preliminary order of forfeiture as a substitute for published notice as to those persons so notified;

4. Pursuant to the provisions of 18 U.S.C. § 1963(1)(2), any persons other than the defendant asserting a legal claim

in the property which has been ordered forfeited to the United States may, within thirty days of the final publication of notice or this receipt of notice under paragraph three (3), whichever is earlier, petition this Court for a hearing to adjudicate the validity of this alleged interest in the property. The hearing shall be held before the Court alone, without a jury;

5. Following the Court's disposition of all third parties interests, the Court shall, if appropriate, enter a final order of forfeiture, as to the property which is the subject of this preliminary order of forfeiture, which shall vest clear title in the United States of America;

6. That, pursuant to the provisions of 18 U.S.C. § 1983(m), the United States has the authority to forfeit substitute assets to satisfy the forfeiture judgment entered by the Court. Should assets become available to satisfy the forfeiture judgment, the United States shall at that time file a motion for substitution of assets before this Court requesting permission to seize such assets and publish notice of the United States' intent to forfeit the property in satisfaction of the forfeiture money judgment according to law;

7. That, the terms and conditions of this preliminary order of forfeiture entered by the Court be made part of the sentence imposed against defendant GUY ALTOBELLO and included in any judgment and commitment order entered in this case against him;

8. This Court shall retain jurisdiction in this matter to take additional action and enter further orders as necessary to implement and enforce this forfeiture order.

/s/ Charles R. Norgle Sr.
CHARLES R. NORGLE SR.
United States District Judge

DATED: 5/29/02

UNITED STATES DISTRICT COURT

NORTHERN District of **ILLINOIS**

UNITED STATES OF AMERICA

V.

JOSEPH N. BASINSKI

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

(Docketed May 10, 2002)

Case Number: **00 CR 853-2**

Jeffrey N. Cole and Andrew T. Staes
Defendant's Attorney

THE DEFENDANT:

X pleaded guilty to count(s) ONE AND TWO

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. §1962(d)	Racketeering Conspiracy	4/1998	I
18 U.S.C. § 371	Conspiracy		2

The defendant is sentenced as provided in pages 2 through _____ of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.:
339-36-5545

Defendant's Date of Birth:
March 13, 2945

Defendant's USM No.:
10420-424

Defendant's Residence Address:

3825 Devon Avenue
Chicago, IL 60659

Defendant's Mailing Address:

Metropolitan Correctional Center
71 West Van Buren
Chicago, IL 60605

May 6, 2002
Date of Imposition of Judgment

/s/ Charles R. Norgle, Sr.
Signature of Judicial Officer

JUDGE
CHARLES R. NORGLE, SR.
Name & Title of Judicial Officer

May 6, 2002
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total total term of 108 months .

X The court makes the following recommendations to the Bureau of Prisons:
designation at F M C, Rochester, Mn.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____
at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

ADDITIONAL IMPRISONMENT TERMS

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 108 months on Count One and 60 months on Count Two. Said sentence on Counts One and Count Two, to run concurrently with each other.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

X The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL SUPERVISED RELEASE TERMS

Within 72 hours of his release from the Bureau of Prisons, the defendant shall report in person to the probation officer in the district to which the defendant is released.

Random drug tests shall not exceed 104 tests per year.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
TOTALS	**$ 200.00**	**$ 0.00**	**$ $5,145,000**

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

X The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	*Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Victims listed in government's version.	$5,145,000	$5,145,000	jointly and severally
TOTALS	$ 5,145,000	$ 5,145,000	

☐ If applicable, restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ☐ fine and/or ☐ restitution.

☐ the interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

---

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, or ☐ E below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ E below); or

C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of _____ _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E X Special instructions regarding the payment of criminal monetary penalties:

Restitution is payable jointly and severally in equal monthly installments over the three year period of supervised. The defendant may voluntarily commence restitution payments immediately.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment.

All criminal monetary penalties, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

ADDITIONAL FORFEITED PROPERTY

(See attached preliminary order of forfeiture.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	No. 00 CR 0853-2
v.	)	Hon.
JOSEPH N. BASINSKI	)	Charles R. Norgle Sr.

PRELIMINARY ORDER OF FORFEITURE

This cause comes before the Court on motion of the United States for entry of a preliminary order of forfeiture as to specific property pursuant to the provisions of Title 18, United States Code, Sectio. 1963, and Fed. R. Crim. P. 32.2, and the Court being fully informed hereby finds as follows:

(a) On November 17, 2000, a superseding indictment was returned charging defendant JOSEPH N. BASINSKI and others with violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) pursuant to the provisions of 18 U.S.C. § 1962(d), among other violations;

(b) The indictment sought forfeiture to the United States of specific property pursuant to the provisions of 18 U.S.C. § 1963;

(c) On October 10, 2001, pursuant to Fed. R. Crim. P. 11, defendant JOSEPH N. BASINSKI entered a voluntary plea of guilty to the indictment, including Count One, thereby making the property named in the indictment subject to forfeiture pursuant to 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3);

(d) Pursuant to the terms of his plea agreement, and as a result of his violations of 18 U.S.C. § 1962(d), defendant JOSEPH N. BASINSKI agreed that certain property,

namely, funds and miscellaneous jewelry, gems and watches in the amount of $4,845,000, for which the defendant is liable, jointly and severally with his co-defendants, are subject to forfeiture because the properties were acquired or maintained in violation of RICO; the property afforded a source of influence over an enterprise established, operated or controlled in violation of the RICO law; and/or because the property was the proceeds of racketeering activity or was derived from the proceeds of racketeering activity;

(e) Furthermore, defendant JOSEPH N. BASINSKI agreed that any substitute assets up to the value of the money and jewelry acquired are subject to forfeiture to the United Sates, pursuant to the provisions of 18 U.S.C. § 1963(m);

(f) Moreover, defendant JOSEPH N. BASINSKI agreed to the entry of a forfeiture judgment for $4,845,000, for all jewelry acquired pursuant to the offense in Count One, and for all substitute assets. Prior to sentencing, defendant JOSEPH N. BASINSKI agreed to the entry of preliminary order of forfeiture relinquishing any right, title, or ownership interest he has in the foregoing property;

(g) As more fully described in his plea agreement, defendant JOSEPH N. BASINSKI agreed that a restitution judgment shall be entered against him. Defendant JOSEPH N. BASINSKI further agreed that judgment for both restitution on behalf of the victims and funds in satisfaction of the forfeiture judgment can be entered against him. The government agrees to recommend that any funds paid in satisfaction of the restitution order be credited to reduce both the restitution order and the outstanding forfeiture judgment and that all defendants ordered to pay restitution and forfeit assets be jointly and severally liable;

(h) Because funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000 are subject to forfeiture, the government requests that this Court enter a preliminary order of forfeiture, pursuant to 18 U.S.C. § 1963(a)(1), (a)(2) and (a)(3), forfeiting all right, title, and interest of defendant JOSEPH N. BASINSKI in the foregoing property for disposition according to law;

(i) If any of the funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000, as a result of any act or omission on the part of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

the Court is authorized to order, pursuant to 18 U.S.C. § 1963(m), the forfeiture of any other property belonging to defendant JOSEPH N. BASINSKI, up to the value of the funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000, to satisfy the judgment entered by the Court;

(j) The United States requests that the terms and conditions of this preliminary order of forfeiture entered by the Court be made part of the sentence imposed against defendant JOSEPH N. BASINSKI and included in any judgment and commitment order entered in this case against him.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. That, pursuant to the provisions of 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3), and Fed. R. Crim. P. 32.2, all right, title, and interest of defendant JOSEPH N. BASINSKI in the funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000 are hereby forfeited to the United States of America for disposition according to law;

2. Upon entry of a preliminary order of forfeiture, pursuant to the provisions of 18 U.S.C. § 1963(e), the United States Marshal shall seize and take custody of such cash and miscellaneous jewelry, gems, and watches, for disposition as the Attorney General may direct;

3. Pursuant to the provisions of 18 U.S.C. § 1963(1)(1), the United States Marshal shall publish notice of this order and of its intent to dispose of the property as the Attorney General may direct. The government may also, to the extent practicable, pursuant to statute, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the preliminary order of forfeiture as a substitute for published notice as to those persons so notified;

4. Pursuant to the provisions of 18 U.S.C. § 1963(1)(2), any persons other than the defendant, asserting a legal claim in the property which has been ordered forfeited to the United States may, within thirty days of the final publication of notice or this receipt of notice under paragraph three (3), whichever is earlier, petition this Court for a hearing to adjudicate the validity of this alleged interest in the property. The hearing shall be held before the Court alone, without a jury;

5. Following the Court's disposition of all third parties interests, the Court shall, if appropriate, enter a final order of forfeiture, as to the property which is the subject of this preliminary order of forfeiture, which shall vest clear title in the United States of America;

6. Pursuant to the provisions of 189 U.S.C. § 1983(m), the United States has the authority to forfeit substitute assets to satisfy the forfeiture judgment entered by the Court. Should assets become available to satisfy the forfeiture judgment, the United States shall at that time file a motion for substitution of assets before this Court requesting permission to seize such assets and publish notice of the United States' intent to forfeit the property in satisfaction of the forfeiture money judgment according to law;

7. The terms and conditions of this preliminary order of forfeiture entered by the Court be made part of the sentence imposed against defendant JOSEPH N. BASINSKI and included in any judgment and commitment order entered in this case against him;

8. This Court shall retain jurisdiction in this matter to take additional action and enter further orders as necessary to implement and enforce this forfeiture order.

/s/ Charles R. Norgle Sr.
CHARLES R. NORGLE SR.
United States District
Judge

DATED: 5/6/02

UNITED STATES DISTRICT COURT

NORTHERN District of **ILLINOIS**

UNITED STATES OF AMERICA

V.

WILLIAM A. HANHARDT

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: **00 CR 853-1**

E. J. EHRLICH
Defendant's Attorney

THE DEFENDANT:

X pleaded guilty to count(s) One and Two

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. §1962(d)	Racketeering Conspiracy	April 1998	1
18 U.S.C. §371	Conspiracy	April 1996	2

The defendant is sentenced as provided in pages 2 through _____ of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.:
350-20-7580

Defendant's Date of Birth:
December 15, 1928

Defendant's USM No.:
13236-424

Defendant's Residence Address:

835 Heather road
Deerfield, Illinois 60015

Defendant's Mailing Address:

May 2, 2002
Date of Imposition of Judgment

/s/ Charles R. Norgle, Sr.
Signature of Judicial Officer

JUDGE
CHARLES R. NORGLE, SR.
Name & Title of Judicial Officer

May 2, 2002
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total total term of 188 months .

X The court makes the following recommendations to the Bureau of Prisons:
designation at F M C, Rochester, Mn.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____ _____

_____

_____

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By /s/ _____
DEPUTY UNITED STATES MARSHAL

ADDITIONAL IMPRISONMENT TERMS

The defendant is hereby committed to the custody of the united States Bureau of Prisons to be imprisoned for a total of 188 months on Count One and 60 months on Count Two.

Said sentence on Counts One and Two, to run concurrently with each other.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one

drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

X The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm

the defendant's compliance with such notification requirement.

ADDITIONAL SUPERVISED RELEASE TERMS

Within 72 hours of his release from the Bureau of Prisons, the defendant shall report in person to the probation officer in the district to which the defendant is released.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
TOTALS	$ 200.00	$ 0.00	$ 5,145,000

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

X The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	*Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Victims listed in government's version.	$5,145,000	$5,145,000	jointly and severally
TOTALS	$ 5,145,000	$ 5,145,000	

If applicable, restitution amount ordered pursuant to plea agreement $ _____

The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the
☐ fine and/or ☐ restitution.

☐ the interest requirement for the
☐ fine and/or ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, or ☐ E below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ E below); or

C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E X Special instructions regarding the payment of criminal monetary penalties:

Restitution is payable jointly and severally in equal monthly installments over the three year period of supervised release.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments

made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

ADDITIONAL FORFEITED PROPERTY

(See attached preliminary order of forfeiture.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	No. 00 CR 0853-1
)	
v.)	Hon.
)	Charles R. Norgle Sr.
WILLIAM A. HANHARDT)	

PRELIMINARY ORDER OF FORFEITURE

This cause comes before the Court on motion of the United States for entry of a preliminary order of forfeiture as to specific property pursuant to the provisions of Title 18, United States Code, Section 1963, and Fed.R.Crim.P. 32.2, and the Court being fully informed hereby finds as follows:

(a) On November 17, 2000, a superseding indictment was returned charging defendant WILLIAM A. HANHARDT and others with violations of the Racketeer Influenced and Corrupt Organizations Act pursuant to the provisions of 18 U.S.C. § 1962(d), among other violations;

(b) The indictment sought forfeiture to the United States of specific property pursuant to the provisions of 18 U.S.C. § 1963;

(c) On October 25, 2001, defendant WILLIAM A. HANHARDT entered a voluntary plea of guilty to the indictment, including Count One, thereby making the property named in the indictment subject to forfeiture pursuant to 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3), which states in part;

> (a) Whoever violates any provision of section 1962 of this chapter..shall forfeit to the United States,

(1) any interest the person has acquired or maintained in violation of Section 1962

(2) any –

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over; any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of Section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of Section 1962.

(d) As a result of his violations of 18 U.S.C. § 1962(d), to which he pled guilty in Count One, the Court shall order forfeiture of the following property to the United States, pursuant to the provisions of 18 U.S.C. § 1963(a)(1),(a)(2), and (a)(3), which property represents all interests acquired and maintained in violation of 18 U.S.C. § 1962; any interest in; security of or claim against; or property or contractual right of any kind affording a source of influence over; any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of Section 1962; and property constituting or derived from proceeds obtained, directly or indirectly, from the defendant's violation of 18 U.S.C. § 1962;

1. Funds and miscellaneous jewelry, gems and watches in the amount of $4,845,000, for which the defendant is liable, jointly and severally with his co-defendants; and

2. The real property commonly known as 835 Heather Road, Deerfield, Illinois, legally described as follows:

> LOT 1 IN HAMILTON'S SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTH 355.30 FEET (EXCEPT THE WEST 494.55 FEET THEREOF) OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/43 OF SECTION 28, TOWNSHIP 43 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 20, 1976 AS DOCUMENT 1767938, IN BOOK 54 OF PLATS, PAGE 48, IN LAKE COUNTY, ILLINOIS
>
> Permanent Index Number: 16-28-402-032.

(e) The United States recognizes that defendant WILLIAM A. HANHARDT's wife has an ownership interest in the foregoing real property that is subject to forfeiture;

(f) In lieu of forfeiting the foregoing real property to the United States, the government and the defendant WILLIAM A. HANHARDT have agreed that the defendant will provide a cashier's check representing half of the net equity in the real property in the amount of $199,500. The cashier's check representing the value of the defendant's

ownership interest in the real property, shall be made payable to the United States Marshals Seized Asset Management Fund, to satisfy the amount due prior to or at the imposition of sentencing. Additionally, the defendant agrees to satisfy the judgment with respect to the real property with funds not subject to claim by any third party, other than potential victims in this action;

(g) The government requests and it is agreed that this partial satisfaction of the forfeiture judgment, with funds representing the defendant's ownership interest in the property, does not affect the remainder of the forfeiture judgment to be entered against defendant WILLIAM A. HANHARDT for forfeiture of funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000;

(h) Accordingly, on April 26, 2002, defendant WILLIAM A. HANHARDT provided a cashiers check number 1781576 in the amount of $199,500 made payable to the United States Marshals Seized Asset Management Fund. The cashiers check in the amount of $199,500, representing the value of the defendant's half of the net equity in the real property, commonly known as 835 Heather Road, Deerfield, Illinois, shall be retained in escrow, pending further order of the Court. As the defendant has partially satisfied the forfeiture judgment with respect to the real property by proving a check in the amount of $199,500, the government agrees to release the *Lis Pendens* notice on the real property commonly known as 835 Heather Road, Deerfield, Illinois;

(i) Because funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000, and funds in the amount of $199,500, representing the defendant's interest

in the real property, are subject to forfeiture, the government requests that this Court enter a preliminary order of forfeiture, pursuant to 18 U.S.C. § 1963(a)(1), (a)(2) and (a)(3), forfeiting all right, title, and interest of defendant WILLIAM A. HANHARDT in the foregoing property for disposition according to law;

(j) If any of the funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000, as a result of any act or omission on the part of the defendant:

1. cannot be located upon the exercise of due diligence;

2. has been transferred or sold to, or deposited with, a third party;

3. has been placed beyond the jurisdiction of the Court;

4. has been substantially diminished in value; or

5. has been commingled with other property which cannot be subdivided without difficulty;

the Court shall order pursuant to 18 U.S.C. § 1963(m), the forfeiture of any other property belonging to defendant WILLIAM A. HANHARDT, up to the value of the funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000, to satisfy the judgment entered by the Court;

(k) The United States requests that the terms and conditions of this preliminary order of forfeiture entered by the Court be made part of the sentence imposed against defendant WILLIAM A. HANHARDT and included in any

judgment and commitment order entered in this case against him.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. That, pursuant to the provisions of 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3), and Fed. R. Crim. P. 32.2, all right, title, and interest of defendant WILLIAM A. HANHARDT in the funds and miscellaneous jewelry, gems, and watches in the amount of $4,845,000, and funds in the amount of $199,500, representing the value of the defendant's ownership interest in the real property commonly known as 835 Heather Road, Deerfield, Illinois, is hereby forfeited to the United States of America for disposition according to law;

2. As the defendant has partially satisfied the forfeiture judgment with respect to the real property by proving a check in the amount of $199,500, the government agrees to release the *Lis Pendens* notice on the real property commonly known as 835 Heather Road, Deerfield, Illinois;

3. Upon entry of a preliminary order of forfeiture, pursuant to the provisions of 18 U.S.C. § 1963(e), the United States Marshal shall seize and take custody of the cashier's check in the amount of $199,500, representing the value of the defendant's ownership interest in the real property commonly known as 835 Heather Road, Deerfield, Illinois and miscellaneous jewelry, gems and watches, for disposition as the Attorney General may direct;

4. Further, pursuant to the provisions of 18 U.S.C. § 1963(1)(1), the United States Marshal shall publish

notice of this order and of its intent to dispose of the property as the Attorney General may direct. The government may also, to the extent practicable, pursuant to statute, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the preliminary order of forfeiture as a substitute for published notice as to those persons so notified;

5. Pursuant to the provisions of 18 U.S.C. § 1963(1)(2), any persons other than the defendant, asserting a legal claim in the property which has been ordered forfeited to the United States may, within thirty days of the final publication of notice or this receipt of notice under paragraph three (3), whichever is earlier, petition this Court for a hearing to adjudicate the validity of this alleged interest in the property. The hearing shall be held before the Court alone, without a jury;

6. Following the Court's disposition of all third parties interests, the Court shall, if appropriate, enter a final order of forfeiture, as to the property which is the subject of the this preliminary order of forfeiture, which shall vest clear title in the United States of America;

7. That, pursuant to the provisions of 18 U.S.C. § 1983(m), the United States has the authority to forfeit substitute assets to satisfy the forfeiture judgment entered by the Court. Should assets become available to satisfy the forfeiture judgment, the United States shall at that time file a motion for substitution of assets before this Court requesting permission to seize such assets and publish notice of the United States' intent to forfeit the property in satisfaction of the forfeiture money judgment according to law;

8. That, the terms and conditions of this preliminary order of forfeiture entered by the Court be made part of the sentence imposed against defendant WILLIAM A. HANHARDT and included in any judgment and commitment order entered in this case against him;

9. This Court shall retain jurisdiction in this matter to take additional action and enter further orders as necessary to implement and enforce this forfeiture order.

/s/ Charles R. Norgle Sr.
CHARLES R. NORGLE SR.
United States District Judge

DATED: 5-3-02

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

May 7, 2004

Before

Hon. William J. Bauer, *Circuit Judge*

Hon. Richard A. Posner, *Circuit Judge*

Hon. Diane P. Wood, *Circuit Judge*

Nos. 02-2465 and 02-3625	Appeals from the United States District Court for the Northern District of Illinois, Eastern Division
UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	
v.	
GUY S. ALTOBELLO, *Defendant-Appellant.*	No. 00 CR 853
	Charles R. Norgle, Sr. *Judge.*

ORDER

On consideration of defendant-appellant Guy S. Altobello's petition for rehearing filed in the above-captioned case on March 30, 2004, all of the judges on the original panel have voted to deny. The petition for rehearing is therefore DENIED.